

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

ISSUE DATE: December 17, 2003

In the Matter of The Complaint of the
Minnesota Department of Commerce
Against OnSystems Technology, LLC,
a Colorado Limited Liability Company,
OnSystems Technology, LLC, a Minnesota
Limited Liability Company, Mile High
Telecom Partners, LLP, a Colorado Limited
Liability Partnership d/b/a Mile High Telecom,
Alticomm, Inc. f/k/a Eastern Telephone Inc.,
a Massachusetts Corporation, and The
Minnesota Phone Company Financial
Group, LLP a/k/a The Minnesota Phone
Company LLP, a Minnesota Limited Liability
Partnership, all dba "The Minnesota Phone
Company" Regarding Lack of Authority to
Operate in Minnesota

DOCKET NO. P-6164/C-02-1383

In the Matter of the Application of
ServiSense.com, Inc. to Provide Local
Exchange Service

DOCKET NO. P-5916/NA-00-815

In the Matter of the Application of
ServiSense.com, Inc. to Provide Interexchange
Service

DOCKET NO. P-5916/NA-00-827

In the Matter of the Application of Alticomm,
Inc. to Provide Long Distance Telephone
Service

DOCKET NO. P-6196/NA-02-1773

In the Matter of the Application of Alticomm,
Inc. to Provide Local Exchange Service

DOCKET NO. P-6169/NA-03-81

In the Matter of an Application to Transfer Assets With ServiSense.com, Inc. d/b/a The Minnesota Phone Company and Alticomm, Inc.

DOCKET NO. P-6196, 5916/PA-03-599

In the Matter of an Interconnection Agreement Between ServiSense.com, Inc and Qwest Corporation

DOCKET NO. P-5916, 421 /M-00-811

In the Matter of a Master Resale Agreement Between Sprint Minnesota, Inc. and Alticomm, Inc.

DOCKET NO. P-6196, 430/IC-03-577

In the Matter of a Resale Agreement Between Qwest Corporation and Alticomm, Inc.

DOCKET NO. P-6196, 421/IC-03-1444

ORDER APPROVING SETTLEMENT AND
DIRECTING IMPLEMENTATION

PROCEDURAL HISTORY

On October 8, 2002, the Minnesota Department of Commerce (the Department) filed the above captioned Complaint alleging, among other things that Alticomm, Inc., formerly known as Eastern Telephone, Inc., and ServiSense.com, Inc. has been operating in Minnesota without a certificate of authority granted by the Commission pursuant to Minn. Stat. § 237.16.

On October 23, 2002, Alticomm filed an Answer denying the substantive allegations of the Complaint and representing that it acted on behalf of itself and as manager of ServiSense.com, Inc. (ServiSense) pursuant to an Order of the United States Bankruptcy Court, District of Massachusetts Case No 01-16539-WCH.

On October 15, 2002, Alticomm filed an application to provide long distance telephone service. The matter was assigned to Docket No. P-6196/NA-02-1773.

On January 17, 2003, Alticomm filed an application to provide resold local exchange telephone service. The matter was assigned to Docket No. P-6196/NA-03-81.

On April 16, 2003, Alticomm filed an application to transfer the assets of ServiSense.com, Inc. d/b/a The Minnesota Phone Company to Alticomm, Inc. The matter was assigned to Docket No. P-6196, 5916MA-03-599.

On April 15, 2003, Sprint Minnesota, Inc. filed with the Commission for approval its Interconnection Agreement with Alticom. The matter was assigned to Docket No. P-6196, 430/IC-03-577.

On September 9, 2003, Qwest Communications filed with the Commission for approval its Interconnection Agreement with Alticom. The matter was assigned to Docket No. P-6196, 421/1444.

On December 23, 2002, the Commission issued its ORDER DIRECTING COMPLIANCE WITH FILED AGREEMENT, addressing the issues identified in the Department's Complaint.

On February 18, 2002, the Department filed comments alleging that Alticom was not in compliance with the filed agreement.

On February 28, 2003 Alticom filed reply comments denying that it was not in compliance with the filed agreement, with a supplemental filing made July 17, 2003.

On July 29, 2003, the Commission issued its ORDER DISMISSING COMPLAINTS, APPROVING TRANSFER OF CUSTOMERS; REFERRING FOR PENALTY AND CONTESTED CASE PROCEEDINGS in Docket No. P-6164/C-02-1383.

On August 22, 2003, the Commission issued a Notice of Commission Meeting regarding Alticom, to be held on September 4, 2003 in Docket No. P-6146/C-02-1383.

On November 7, 2003, the Department submitted what it characterized as a settlement agreement reached between the Department and Alticom.

The Commission met on December 11, 2003 to consider this matter.

FINDINGS AND CONCLUSIONS

I. THE PARTIES' SETTLEMENT AGREEMENT

The settlement agreement submitted by the Department on November 7, 2003 stated:

This Stipulation resolves all disputes between the Department and [Alticom and ServiSense.com] regarding the above captioned complaint, applications and certificate.

A copy of the document is attached and incorporated into this Order.

In the filing, the parties stated that they have agreed to resolve the Department's Complaint against Alticomm and to resolve Alticomm's alleged tariff noncompliance and inaccurate billings problem described in the Commission Staff Briefing Papers for the September 4, 2003 Commission hearing.

The parties jointly recommended that the Commission issue an Order approving the parties' Settlement Agreement, dismiss the Complaint in Docket No. P-6164/C-02-1383, and close the docket. The parties agreed that upon Commission approval they would be bound by the terms of the Settlement Agreement, a copy of which is attached and incorporated herein.

II. COMMISSION ANALYSIS AND ACTION

In proceedings before the Commission, interested parties are encouraged to enter into settlements of their disputes.¹ The Commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence.²

The Commission has reviewed the parties' Stipulation and recommendations in light of all proceedings to date. The Commission finds that the parties' proposed settlement is in the public interest and is supported by substantial evidence in the record.

Accordingly, the Commission will approve the parties' settlement and direct them to comply with its terms.

The settlement provides and the Commission clarifies that 1) the settlement does not preclude the Commission or the Department from investigating compliance with the Settlement Agreement or with applicable statutes, rules, or Commission Orders and 2) the settlement does not preclude customers or any other person not a party to this agreement from exercising any right or seeking any remedy that may be available to them.

¹ Minn. Stat. § 237.076, Subd. 1.

² Minn. Stat. § 237.076, Subd. 2.

ORDER

1. The Commission hereby approves the Stipulation/Settlement Agreement filed in this matter on November 7, 2003 and directs the parties to comply with the terms thereof. Copy attached and incorporated herein.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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